

Q&A: Amended Solid Wood Packing Material Interim Rule

Q. Does the amended interim rule contain any substantive changes or alter the effective date of December 17, 1998, from the previous interim rule on solid wood packing material (SWPM) from China?

A. No. The amendment clarifies the interim rule requiring all SWPM from China, including Hong Kong, to be treated with preservatives, heat-treated, or fumigated prior to arrival in the United States. The amended rule provides additional explanations and answers many frequently asked questions. It makes no change to the effective date.

Q. Why is the amended interim rule being enacted without prior opportunity for public comment?

A: Immediate action is needed to prevent further introduction and spread of exotic pests associated with SWPM from China. Prior notice and other public procedures with respect to this interim rule would be contrary to public interest.

Q. Are shipments from the Hong Kong Special Administrative Region covered under the interim rule?

A. Yes. As a point of clarification, the earlier interim rule imposed requirements on SWPM from China, and the new amended interim rule uses the terms "merchandise exported from China or Hong Kong accompanied by solid wood packing material of Chinese origin" and "merchandise exported from China or Hong Kong not accompanied by any solid wood packing material." In both the interim rule and the amendment, APHIS intends the regulatory requirements to apply to merchandise exported from China, including Hong Kong, and to SWPM originating in China.

Q. Does the exporter statement that there is no solid wood packing material in a shipment have to physically accompany the shipment?

A. Yes. An exporter statement must be available in the paperwork associated with every shipment that does not contain SWPM. This paperwork must accompany the shipment because APHIS enforce-

ment activities at ports usually begin with examination of manifests and other cargo documents, and an exporter statement attached to these documents is the basis for distinguishing between shipments that contain regulated SWPM and shipments that do not. In other words, an inspector reviewing manifests and bills of lading must assume that any shipment that does not have an exporter statement in these documents may contain SWPM and should, therefore, have a certificate on file in the importer's office. Any shipment that does not contain SWPM but lacks an exporter statement documenting this fact attached to the invoice or bill of lading may be delayed while the inspector determines which kind of shipment it is (i.e., one with or without SWPM).

Q. Is APHIS prepared to receive fax copies of documents?

A. Yes. APHIS anticipates that brokers and importers will make extensive use of fax transmission to provide inspectors with copies of certificates the inspectors request and to send inspectors exporter statements in advance of the arrival of cargo. APHIS will be enhancing the capabilities of affected ports to receive large volumes of faxes and will widely publish the port fax machine telephone numbers. A document needs to be sent via fax only if the inspector requests to examine it.

Q. How is the U.S. Customs Service adapting the automated broker interface (ABI) system to help enforce this rule?

A. Customs is currently developing ABI fields for the purpose of allowing brokers who use the ABI for their shipments to indicate the existence of a certificate or exporter statement for a shipment in the appropriate field. Inspectors will thus be able to use ABI data to see whether the importer states that a certificate or exporter statement exists for each shipment listed in the ABI (which is currently used for more than 75 percent of all seaborne cargo shipments). Customs will conduct audits to monitor compliance.

Q. Does the treatment certificate have to physically accompany the shipment?

A. No. Alternatives to physically attaching the certificate to the shipment are available in some situations. Attachment of certificates and exporter statements could greatly increase the size of vessel manifests. The purpose of requiring documents to be attached was to allow inspectors at the port of entry to confirm that the required documents exist. But it is not neces-

sary for the certificate to physically accompany the shipment if the existence of the certificate is confirmed and a copy of it is available to the inspector when needed.

When cargo enters the United States using Customs' electronic entry procedures, the existence of a certificate and the contact person who can provide a copy of the certificate can be recorded in the Customs Automated Broker Interface (ABI). Therefore, this rule will not require that a certificate accompany a shipment containing SWPM from China for shipments with electronic entry summaries filed under the ABI. Instead, the rule will require that for importers using ABI to enter goods from China at a U.S. port, the importers must state during their Customs entry filing that they have on file in their office a certificate accurately documenting the treatment of the SWPM. Also, importers must produce a copy of the certificate if requested by an inspector.

For shipments that do not employ the ABI and rely on paper-based documentation, the rule will continue to require that a copy of the certificate accompany the shipment.

Q. How does the interim rule pertain to companies that carry express delivery packages from China or Hong Kong?

A. Companies that carry express delivery packages from China or Hong Kong to the United States for many different customers may present a single certificate, exporter statement, or both (as appropriate under the regulations) for each aircraft carrying their packages for delivery in the United States. The company may present a single certificate if it has arranged treatment of all the SWPM carried on the flight, or the company may present multiple certificates if the flight carries packages containing SWPM that were accepted for delivery from multiple customers, each of whom arranged treatment and certification of their own packages.

Q. Who is liable for user fees, fines, or other problems resulting from inspection or noncompliance with the interim rule?

A. The importer is responsible for all costs associated with inspection, separation, and destruction or reexportation of SWPM, including costs of the services of an inspector to monitor such activities. Any such costs may be billed to the importer.

Q. What are the penalties for noncompliance?

A. APHIS will issue warnings to first-time offenders. If offenders continue to violate the rule, APHIS will prosecute them. Under Federal law, APHIS can levy fines of up to \$1,000 per count. If APHIS finds that false documents are being submitted, the shipper may also face U.S. Customs penalties and/or criminal charges.

Q. Is wood that is an integral part of shipping containers considered to be SWPM?

A. No. USDA does not consider wood that is an integral part of shipping containers to be included in the definition of solid wood packing material. Also, such material is frequently treated, which would reduce or eliminate pest risk. This material is subject to inspection for quarantine pests, however, and quarantine action would be taken if the wood is found to be infested.

Q. Is plywood considered to be SWPM?

A. No. Plywood, as well as other highly processed or synthetic materials, such as oriented strandboard, corrugated paperboard, and plastic and resin composites, are not considered solid wood packing material. These nonregulated packing materials do not require treatment, and they are believed to be a good option to eliminate the pest risk encountered with untreated SWPM.

Q. Can private companies in Hong Kong and China provide treatment certificates?

A. Private companies in Hong Kong have been authorized by the Chinese government to provide treatment certificates. A list of these companies can be obtained on the World Wide Web at <http://www.aphis.usda.gov>. (Under "Hot Issues," select "Asian Longhorned Beetle.") The Department for Supervision on Animals and Plants State Administration for Entry-Exit Inspection and Quarantine of P.R. China (CIQ) will provide treatment certificates in China. A sample certificate can be viewed at the aforementioned Web site.

Q. What about shipments that transit other countries or are reexported from other countries?

A. The rule does not apply to merchandise and SWPM that originated in other countries and were merely transshipped through Chinese or Hong Kong ports en route to the United States. So, for example, merchandise from Europe packed in SWPM from Europe that was transshipped through Hong Kong would not be subject to the regulations; but if articles or SWPM of Chinese origin were added to that shipment in Hong Kong, those articles and SWPM would be subject to the regulations.

Q. If sealed containers that are being shipped to a third country arrive in the United States on a vessel and remain on the same vessel while in a U.S. port, will they be covered by the SWPM interim rule?

A. Only those containers that are offloaded and imported into the United States will be covered. Containers remaining on the vessel will not be regulated.

Q. If the containers are not being imported into the United States but are being offloaded at a U.S. port to be transferred to another ship, will they be covered by the interim rule?

A. If a sealed container is offloaded, remains sealed at the U.S. port and then is placed on a departing ship, it will not be covered. It will not be regulated unless there is manipulation of the cargo. If there is manipulation of the cargo, any SWPM associated with the shipment must be reexported or destroyed.

Q. If containers are being transhipped through Chinese ports, will they be covered?

A. The rule applies to containers with bills of lading from the People's Republic of China or Hong Kong. Containers with other bills of lading would not normally be covered. However, if opened inside China, the container must conform to the rule.

Q. Is there a list of preservatives that are acceptable to APHIS?

A. The regulation states that any preservative registered with the U.S. Environmental Protection Agency is acceptable. However, if APHIS determines that some preservatives are ineffective, we will revisit the issue.

Q. Should fumigation occur before or after packing?

A. Either is okay, as long as all SWPM is fumigated and certified by the Chinese government.

Q. If a pallet has already been treated for a previous shipment, does it need to be retreated?

A. Once a pallet is treated, it is considered treated forever, but treatment must be proven. If pallets are marked when treated, it will be possible to recertify them when they return to China. But the Chinese government must establish such a program. Without a marking system, it is possible that pallets will need to be retreated.

Q. Do pallets that originate from the United States and were treated in the United States need to be certified?

A. Yes. All solid wood packing material accompanying Chinese shipments must have Chinese-government certification. However, that does not mean the pallets need to be retreated in China. If the Chinese government has a program to mark the pallets upon entry into China and recertify them on exit, this procedure is acceptable to APHIS. If evidence is presented to Chinese officials providing proof of treatment, then the Chinese officials can recertify based on the previous certification.

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